Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	ORIGINAL	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States		IB Docket No. 96-111
and		
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations		CC Docket No. 93-23 RM-7931
and		
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite		File No. ISP-92-007

COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

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SUMMARY

GE Americom generally supports the Commission's proposed framework to adapt application of the ECO-Sat test in light of the WTO telecommunications agreement. In particular, we agree with the Commission's proposal to implement streamlined treatment for applications involving WTO member countries and countries with which the U.S. has entered into bilateral agreements. Such applications can be granted absent a showing that a serious risk to competition would result. In addition, we support use of the ECO-Sat test to evaluate applications involving WTO non-members.

GE Americom, however, disagrees with the Commission's proposal to adopt rules here to address intergovernmental satellite organizations and their affiliates. Because of the complexity of issues involving the IGOs and their prospective spin-offs, GE Americom supports deferring action on market entry standards for IGO entities to a separate proceeding. All parties will be in a better position to comment on the rules that should apply to IGO entities once the structure of the IGOs and their affiliates subsequent to restructuring is known.

Finally, certain procedural safeguards should be adopted to protect competition in the U.S. satellite services market. First, the Commission should adopt measures to permit ongoing monitoring of competitive conditions, rather than relying only on a snapshot view at the time an application for U.S. market entry is considered. Second, the Commission should require all participants in U.S. processing rounds to comply with Part 25 legal, technical and financial

qualifications requirements and should impose construction and launch milestones on such entities. These requirements are not necessary, however, when foreign-licensed applicants seek the right to serve the U.S. market outside a processing round. Third, the Commission should adopt measures to collect appropriate cost-based application and regulatory fees and other required contributions paid by U.S.-licensed providers to ensure that such charges do not distort competition.

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COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom") hereby submits its comments in response to the Further Notice of Proposed Rule Making in the above-captioned proceeding, FCC 97-252 (released July 18, 1997) ("*Further Notice*"). In the *Further Notice,* the Commission seeks comment on adapting its proposed "ECO-Sat" test for entry by non-U.S.-licensed satellites into the U.S. market in light of the conclusion of the World Trade Organization ("WTO") agreement on basic telecommunications services. With the modifications described below, GE

Americom supports adoption of the revised DISCO II framework set forth in the *Further Notice.*

INTRODUCTION

As we have emphasized in our previous filings in this proceeding, the policy issues before the Commission here are of critical importance to GE Americom and other U.S.-licensed satellite providers. They have serious implications both for our ability to fairly compete in the U.S. market and for our ability to gain access on a competitive basis to markets abroad.

The historic WTO agreement on telecommunications that was reached this past February represents a tremendous step forward in promoting access to foreign markets and increased choices for U.S. telecommunications users. GE Americom believes that achievement of the agreement was facilitated by the Commission's emphasis on creating competitive market structures in the United States and on encouraging the adoption of similar policies in other countries.

As the Commission recognizes, the WTO agreement now requires the re-evaluation of the framework the Commission proposed last summer in this proceeding[1] in order to develop market entry standards for non-U.S.-licensed carriers that continue to promote full and fair competition and are consistent with U.S. WTO obligations.

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[1] *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States,* 11 FCC Rcd 18178 (1996) ("hereinafter, "*Initial Notice*").

GE Americom generally supports the Commission's proposal to forego application of the ECO-Sat test when considering requests to use the satellite services of a provider from a WTO member country or a country with which the U.S. has a bilateral agreement. In addition, we support use of the ECO-Sat test to evaluate such requests involving WTO non-members. However, we recommend that the Commission defer to a future proceeding issues involving the Intergovernmental Satellite Organizations ("IGOs") and their affiliates. Finally, we propose procedural measures to ensure that U.S.-licensed carriers and new entrants compete on a level playing field.

I. THE COMMISSION SHOULD APPLY THE ECO-SAT TEST ONLY TO APPLICATIONS INVOLVING WTO NON-MEMBERS; IGO ISSUES SHOULD BE DEFERRED

A. Applications Involving WTO Members Should Not Be Subject to the ECO-Sat Test

GE Americom agrees that the Commission can rely on WTO member countries' obligations under the telecommunications agreement to foster competition in the U.S. satellite services market. *Further Notice* at ¶ 17. As a result, it is appropriate to streamline the processing of applications involving WTO members and not subject them to an ECO-Sat test. We also agree, however, that the Commission should reserve the authority to reject applications involving WTO members if an opponent demonstrates that grant would create a serious risk to competition, or to impose appropriate conditions if needed to protect competition. *Id.* at ¶¶ 18-19. The Commission must also retain the power to consider other factors in determining whether an application is consistent with the public interest.

GE Americom believes that streamlined treatment will normally be adequate even when WTO member applicants seek to serve routes involving WTO non-member countries. We generally agree with the Commission's observation that requiring all U.S. market participants to comply with a prohibition on entering into exclusive arrangements with countries they serve normally should address the Commission's competitive concerns in this instance. *Id.* at ¶ 27. However, we note that in some markets, a *de facto* policy of exclusivity may exist even in the absence of an exclusionary agreement with the satellite services provider. The Commission should consider this possibility in evaluating whether a risk to competition is created with respect to a given route. In addition, it will be important for the Commission to retain the ongoing ability to monitor and address competitive issues raised by *de facto* market barriers. The latter issue is discussed further below.

B. Applications Covered by Bilateral Satellite Services Agreements Should Also Be Exempt from the ECO-Sat Test

GE Americom also supports the Commission's proposal not to apply the ECO-Sat test when evaluating applications involving countries with which the U.S. has entered into a bilateral satellite services agreement. *Further Notice* at ¶ 30. The Commission correctly notes that such agreements should achieve the Commission's goal of providing for market access by U.S. satellite providers. Accordingly, it is appropriate to treat applications that are subject to a bilateral agreement under the same framework proposed for applications involving WTO member countries. Such applications should be granted unless an opponent demonstrates that a substantial risk to competition would result. Again, however,

the Commission should retain the authority to monitor competitive conditions and compliance with the terms of the bilateral agreement and the power to revoke or condition authorizations as necessary to address competitive concerns.

C. Applications Involving WTO Non-Members Should Be Subject to the ECO-Sat Test

GE Americom agrees with the Commission that "eliminating the ECO-Sat test for evaluating requests for use of non-WTO satellite systems would not advance and could hinder [the Commission's] overall goals for promoting competition in satellite services." *Further Notice* at ¶ 23. Accordingly, the Commission should require applicants seeking to use non-U.S.-licensed satellite systems from WTO non-member countries to demonstrate that they meet the ECO-Sat test.

Specifically, the Commission should evaluate both the home market of the foreign-licensed provider and the route markets to be served to determine whether there are *de jure* or *de facto* barriers to entry by U.S. satellite service providers. As GE Americom has previously observed, application of such a two-pronged test received strong support from interested parties. *See* GE Americom Reply Comments at 11-12 (citing initial comments of AT&T, Columbia, DIRECTV/Hughes, Lockheed Martin, Orion, and PanAmSat).

D. The Commission Should Address Access by IGOs and Their Affiliates in a Separate Proceeding

As the Commission has recognized, market access issues involving the IGOs raise special concerns. The Commission has acknowledged that the IGOs'

privileges and immunities give them competitive advantages over competing satellite services providers, and that their members are "the primary if not exclusive providers of fixed and mobile maritime services in most major national markets." *Initial Notice* at 18199. The WTO agreement did not address these problems. The IGOs themselves have no obligations under the agreement, and the U.S. has no obligation to accord them national treatment or most-favored-nation status. *See Further Notice* at ¶ 32.

GE Americom continues to believe that the unique problems raised by the IGOs and their subsidiaries warrant establishment of a separate proceeding. *See* GE Americom Reply Comments at 16-18. Because the U.S. has no obligations to the IGOs under the WTO agreement, there is no need to complete consideration of entry questions involving the IGOs prior to the January 1998 deadline for WTO implementation. The Commission should focus its resources in the short term on finishing the steps necessary to put the WTO agreement into effect and address IGO issues later.

Deferral is particularly appropriate given the pending proposals for restructuring and privatization of the IGOs. GE Americom and numerous other commenters in this proceeding have noted that the Commission should not develop standards for considering entry applications involving IGO subsidiaries when those subsidiaries have not yet been created. *See* GE Americom Reply Comments at 17 (citing comments of AT&T, Columbia, HBO, Orion, and PanAmSat). In fact, even COMSAT agreed that prospectively adopting a regulatory framework for IGO

affiliates that do not yet exist would be inappropriate. *Id.* (citing COMSAT Comments at 33). The Commission should heed COMSAT's advice and postpone development of standards for IGO entities to a subsequent proceeding.

When the Commission does adopt market access rules for IGOs and their subsidiaries, it should use as a model the legislation that has been introduced on this subject by Representatives Bliley and Markey. That legislation (H.R. 1872), which GE Americom supports, provides a blueprint for action on IGO issues. It sets forth principles for assessing the independence of any future IGO subsidiaries, prohibits IGO entry into new service areas pending privatization, and describes general standards for assessing the risks to competition posed by the IGOs' market power. If the Commission takes up IGO issues prior to action on the legislation, its rules should reflect the tenets of H.R. 1872.

II. THE COMMISSION MUST ADOPT PROCEDURES TO ENSURE A LEVEL COMPETITIVE PLAYING FIELD

The standards discussed above address the threshold issue of whether a non-U.S.-licensed satellite will be permitted to serve the U.S. market. However, the Commission cannot stop its analysis there if it is to fulfill its objectives of promoting full, fair and effective competition. Instead, the Commission must adopt procedures to ensure that the competitive balance is not shifted against U.S.-licensed carriers. As discussed below, the Commission should: (1) develop procedures for ongoing monitoring and enforcement of its policies, including, for example, the prohibition on entering into exclusionary agreements discussed above; (2) require a demonstration of compliance with the legal, technical, and financial

qualifications standards of Part 25 for all participants in U.S. processing rounds; and (3) to the extent imposed on U.S.-licensed providers, impose cost-based fees and contribution requirements on non-U.S.-licensed providers that enter the U.S. market.

A. The Commission Cannot Rely on a Snapshot Approach in Assessing Competitive Issues

A critical factor in the success of the Commission's policies in promoting competition will be its ability to address competitive issues that arise after it considers a given application to serve the U.S. market. Accordingly, the Commission must retain the power to monitor ongoing compliance with its rules and revoke or impose conditions on authority it has granted in the event Commission policies are violated. GE Americom and other parties have emphasized the need for such procedures in their earlier comments. *See* GE Americom Reply Comments at 13 (citing initial comments of Columbia, Lockheed Martin and TRW).

For example, GE Americom agrees that the Commission should extend its prohibition on entering into exclusionary market access arrangements to all providers that are permitted to serve the U.S. market. *See Further Notice* at ¶ 42. However, as the Commission recognizes, that action will not be meaningful unless the Commission can monitor and address compliance issues as they arise. *Id.* As noted above, *de facto* market barriers can be present even in the absence of an explicit exclusionary agreement. Thus, the Commission should provide a forum for consideration of competitive issues subsequent to action on an application for U.S. market entry.

B. Participants in U.S. Processing Rounds Must Meet Part 25 Technical, Legal and Financial Qualifications Standards

GE Americom agrees in part with the Commission's proposal to extend the Part 25 technical, legal and financial qualifications rules to non-U.S.-licensed providers seeking to serve the U.S. market. *See Further Notice* at ¶ 60. Specifically, GE Americom supports the application of Part 25 standards when a foreign provider seeks to participate in a U.S. satellite processing round. In such cases, the foreign entrant will be competing directly with U.S. applicants for orbital locations and spectrum, and Commission concerns about technical compatibility and preventing spectrum warehousing clearly apply. Thus, the Commission should apply the same standards to foreign entrants who file in the processing round as it does to applicants for a U.S. space station license. In addition, when such foreign providers are awarded authority in a processing round, they should be subject to the same types of construction commencement, completion, and launch milestones that the Commission imposes on round participants that receive U.S. licenses. These measures are needed to ensure efficient use of the orbital arc and to permit unused spectrum to be reclaimed.

In contrast, GE Americom continues to believe that it is unnecessary to impose Part 25 standards on foreign-licensed applicants that do not participate in U.S. processing rounds. *See* GE Americom Reply Comments at 8-10. In such instances, the Commission should rely on the sufficiency of the foreign administration's licensing procedures with respect to qualifications issues. The applicant's compliance with ITU coordination requirements should ensure that use

of the foreign provider's system will not result in harmful interference to U.S.-licensed providers. In addition, the earth station licensee communicating with the foreign-licensed entity will remain fully subject to Commission technical standards. These measures are sufficient to protect U.S. interests. More stringent requirements could lead to similar practices by other administrations, resulting in U.S. licensees being subject to a series of different and potentially conflicting sets of technical and legal standards in seeking to provide satellite capacity abroad.

C. The Commission Should Adopt Fee and Contribution Payment Rules for Non-U.S.-Licensed Satellite Service Providers

Finally, the Commission should ensure that its application and regulatory fee structures and contribution rules do not favor non-U.S.-licensed providers. The Commission's fee filing requirements are imposed on U.S. applicants and licensees in order to defray the costs incurred by the Commission in processing applications and conducting rulemaking and other proceedings. There is no justification for permitting non-U.S.-licensed providers who compete with U.S. licensees and benefit from Commission action to avoid payment of the same application and regulatory fees. However, the Further Notice does not address this matter, and the Commission has not required non-U.S.-licensed providers to file fees in the pending processing round for satellite services above 36 GHz. *See* Public Notice, Report No. SPB-95 (Aug. 13, 1997).

GE Americom submits that equivalent treatment of U.S.-licensed and non-U.S.-licensed service providers in the U.S. market requires that the costs of Commission action be shared by all parties who benefit from Commission activities.

For example, processing "letters of intent" filed by entities who wish to participate in U.S. processing rounds will require as much Commission time and effort as will the processing of applications for U.S. licenses in those rounds. Furthermore, any provider that serves the U.S. market will benefit from Commission regulatory activities regarding satellite services, although perhaps not to the same extent as U.S. licensees. Accordingly, the Commission should adopt procedures for ensuring that non-U.S.-licensed applicants are required to bear their fair measure of the costs of Commission activities by imposing appropriate application and regulatory fees on such providers. Permitting foreign-licensed carriers to avoid shouldering the costs of regulation would clearly distort the market for satellite services in the U.S.

Similarly, the Commission must also ensure parity in its contribution requirements. For example, to the extent that U.S.-licensed satellite providers are required to contribute to the universal service fund,[2] the Commission must develop

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[2] The extent to which a satellite operator is required to contribute to universal service depends on the extent to which that operator is itself engaged in the provision of "telecommunications services" under the Telecommunications Act. *See Report and Order*, CC Docket No. 96-45, FCC 97-157, at ¶ 781 (rel. May 8, 1997). This obligation applies to both interstate and international services. The Commission must ensure that foreign-licensed satellite operators contribute when their spacecraft are used for these purposes. Furthermore, GE Americom and other satellite operators have requested clarification or reconsideration of the *Report and Order* to make certain that satellite operators are not required to contribute based on revenues received from the provision of non-common carrier telecommunications, or from the provision of bare space segment which by itself is not "telecommunications" at all. *See, e.g.*, Petition for Clarification or Reconsideration of GE American Communications, Inc. (filed July 17, 19997); Columbia Communications Corporation Petition for Reconsideration and/or Clarification (filed July 17, 1997); Comments of PanAmSat Corporation on Petitions for Clarification

a mechanism to collect contributions from foreign-licensed participants in the U.S. market as well. Again, any disparity in treatment of non-U.S. licensees will harm competition in the satellite service market.

CONCLUSION

The Commission should adopt its general framework for evaluating applications to use non-U.S.-licensed satellite carriers for service to the U.S. market. However, the Commission should defer to a subsequent proceeding issues involving the IGOs and their affiliates. In addition, the Commission should adopt

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or Reconsideration (filed Aug. 18, 1997); Comments of Loral Space & Communications Ltd. in Support of Petitions for Clarification and Reconsideration (filed Aug. 18, 1997). However, to the extent that the Commission reaches a different view, it must collect additional contribution from foreign-licensed satellites so that all satellite operators compete on the same footing.

procedural rules that are designed to ensure a level playing field among U.S.-licensed and non-U.S.-licensed satellite operators.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of GE American Communications, Inc. were served by hand delivery this 21st day of August, 1997 to:

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